IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

MFA.No. 216 of 2001()

OPMV.1607/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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APPELLANT: PETITIONER

NIDHIN S/O. THANKAPPAN,
RAMANI VILASAM, ULIYAKKOVIL,
KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: RESPONDENTS
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1. **A.NIZAMUDDIEN, S/O. ABDUL LATHEEF,**
   NAZIM NIVAS, KANNANALLOOR, KOLLAM.

2. **NAVAS A/. S/O. ABDUL LATHEEF,**
   NAZIM NIVAS, KANNANALLOOR, KOLLAM.

3. **KERALA STATE INSURANCE DEPARTMENT,**
   KOLLAM BRANCH, KOLLAM.

BY GOVERNMENT PLEADER SRI.R.BASANT BALAJI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.216 of 2001

Dated this the 30th October, 2007.

J U D G M E N T

Petitioner in O.P.(M.V.) No.1607/1996, on the file of the Motor Accidents Claims Tribunal, Kollam, is the appellant. The appeal is filed against an award passed by the Tribunal dismissing the original petition filed by the appellant claiming compensation. Appellant filed the Original Petition claiming compensation against the respondents, alleging that at about 1.30 PM. on 8.4.1996, he sustained injuries in a motor vehicle accident. It was averred that appellant was riding a bicycle from east to west through Kadappakkada Asramam road, when he reached east of Ashramam Union driving school, the scooter bearing Registration No.KL-2/C 8705 ridden by the second respondent came from behind and hit against the bicycle, and the appellant fell down and sustained injuries. The first respondent is impleaded as the owner and 3rd respondent as Insurer of the vehicle. Owner and driver did not contest the matter. 3rd respondent alone filed a written statement contending that the Original Petition is not maintainable. It was admitted that the vehicle was having insurance coverage issued

by the 3rd respondent, at the time of the accident. It was alleged that the appellant filed the Original petition for compensation in collusion with respondents 1 and 2. Appellant gave evidence as PW.1. He produced a copy of F.I.R. The Tribunal found fault with the appellant for not producing the final report. It was also found that the appellant did not examine any independent witness to prove the negligence of second respondent. The Tribunal did not consider as to whether Insurer in this particular case is entitled to contest the matter on its merits, but dismissed the application. After hearing both sides, I am of the view that it is only just and proper that one more opportunity is afforded to the appellant to establish his claim. For that purpose, the case has to go back.

In the result, the appeal is allowed. Award passed by the Tribunal against O.P.(M.V.) No.1607/1996 is hereby set aside. The case is remanded to the Tribunal for fresh disposal, in accordance with law, after affording the parties an opportunity to adduce further evidence, if so advised.

The parties shall appear before the Tribunal on 15.12.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 216 of 2001

J U D G M E N T

Dated: 30th October, 2007.